

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRIAN CURREN SMITH,

Defendant.

Case No. 3:16-cr-00138-SLG

**ORDER**

Before the Court is Cherise Fowler's Petition for Hearing (Docket 60) asking the Court to hold a hearing on the property referenced in the Preliminary Order of Forfeiture (Docket 39). The motion was referred to Magistrate Judge Kevin McCoy On October 4, 2017. Magistrate Judge McCoy promptly scheduled a hearing on the motion. On October 10, 2017 the Government filed a Motion to Vacate Hearing on Third Party Petition (Docket 67). Magistrate Judge McCoy granted the motion with a text order at Docket 68 and issued a Final Report and Recommendation (Docket 69) thereafter, recommending that the Court dismiss the Petition for Hearing (Docket 60) as moot and vacate that portion of the Preliminary Order of Forfeiture (Docket 39) only as it relates to the 2007 GMC Yukon, VIN: 1GKFK13037R132685. No objections were filed.

When a motion has been referred to a magistrate judge, 28 U.S.C. § 636(b)(1) provides that the district judge "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." However, the district judge must "make a de novo determination of those portions of the [magistrate judge's] report

or specified proposed findings or recommendations to which objection is made.”<sup>1</sup> But “[n]either the Constitution nor the statute requires a district judge to review, de novo, findings and recommendations that the parties themselves accept as correct.”<sup>2</sup> Rather, “[i]t does not appear that Congress intended to require district court review of a magistrate’s factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings.”<sup>3</sup>

In light of the foregoing, the Petition for Hearing at Docket 60 is DENIED as moot and the Court VACATES that portion of the Preliminary Order of Forfeiture at Docket 39 only as it relates to the 2007 GMC Yukon, VIN: 1GKFK13037R132685.

DATED this 31st day of October, 2017 at Anchorage, Alaska.

/s/ Sharon L. Gleason  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> 28 U.S.C. § 636(b)(1).

<sup>2</sup> *U.S. v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (citations omitted).

<sup>3</sup> *Thomas v. Arn*, 474 U.S. 140, 150 (1985).